

\$~05

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ RFA(OS) 84/2019 & C.M. Nos.1463/2020, 55546/2020 and
48569/2019

RABINDRA NATH DASS Appellant
Through Mr. K.K. Malviya, Mr. Sanjiv Joshi
and Ms. Kiran Yadav, Advocates.

versus

MANJU JAIN Respondent
Through Mr. Viren Sibal, Advocate.

CORAM:

HON'BLE MS. JUSTICE HIMA KOHLI

HON'BLE MS. JUSTICE ASHA MENON

ORDER

% **13.02.2020**

**C.M. No.43415/2019 (by the appellant for condonation of 249
days' delay in filing the appeal)**

1. The present appeal has been filed by the appellant/defendant against an order dated 19.12.2018, passed by the learned Single Judge, allowing an application moved by the appellant/defendant under Order XII Rule 6 CPC whereunder, he had admitted the existence of an Agreement to Sell dated 13.6.2012, in respect of the suit premises and also admitted to having received a sum of Rs.1.25 crores, from the respondent/plaintiff as part sale consideration in respect of the suit premises. Further, the appellant/defendant had expressed his willingness to execute a Sale Deed in favour of the respondent/plaintiff, subject to her paying the balance sale consideration of Rs.1.65 crores.

2. In view of the averments made in the application, the same was allowed by the learned Single Judge and the suit instituted by the respondent/plaintiff was decreed in favour of the respondent/plaintiff with a direction that while paying the balance sale consideration to the appellant/defendant, the respondent/plaintiff would be entitled to deduct the court fee of Rs.11,61,300/- affixed on the plaint.

3. It is noteworthy that on the appellant/defendant resisting execution of the Sale Deed, the respondent/plaintiff filed an Execution Petition and in the said proceedings, a Court Commissioner was appointed by the learned Single Judge, who has executed the Sale Deed in favour of the respondent/plaintiff, a position recorded in our order dated 7.2.2020.

4. Coming to the averments made by the appellant/defendant in C.M. No.43415/2019, it is considered necessary to extract below the order passed by this court on 24.10.2019, which reads as follows:-

“1. On the last date of hearing, learned counsel for the appellant/judgment debtor had stated that he had filed an application for seeking modification of judgment dated 19.12.2018, subject matter of the present appeal and the same was listed before the learned Single Judge on 18.10.2019. 2. Today, learned counsel for the respondent/decreed holder hands over a copy of the order dated 18.10.2019, passed by the learned Single Judge, whereunder the appellant’s application has been dismissed by holding that no ground for review has been made out. 3. Coming back to the application for condonation of delay filed with the appeal, the averments made in para-3 of the application are to

the effect that the delay had taken place due to the fact that the appellant was in London and was being represented through his wife, who is his registered Power of Attorney holder and both he and his wife have been undergoing medical treatment for the past two years, which caused the said delay.

4. It is noteworthy that not a scrap of document has been filed alongwith the present application to substantiate the submission made in para-3 of the application that both, the appellant as also his wife, his Power of Attorney holder, have been undergoing any medical treatment.

5. Mr. George, learned counsel for the appellant/judgment debtor states that he may be permitted to file the relevant medical documents in support of the averments made in the application within 10 days. The said documents may be filed within 10 days, with copies to the other side.

6. Learned counsel for the respondent/decreed holder states that the Execution Petition filed by his client for seeking execution of the impugned judgment dated 19.12.2018, is listed on 30.10.2019.

7. Orders passed by the Executing Court shall be subject to the orders passed in the present appeal.

8. List on 13.02.2020. ”

4. We have first asked learned counsel for the appellant/defendant to indicate as to whether he has filed the relevant medical documents in support of the averments made in para 3 of the application to

demonstrate that both, the appellant and his wife were undergoing medical treatment for the past two years, as averred in the application, to which the reply is in the negative. It is now three and a half months since the said order was passed, but admittedly, no such steps have been taken by the appellant to file the documents. All that has happened during this duration is a change of the counsel, who has filed two applications, both seeking amendment of the averments made in the appeal. Quite apparently, the appellant's focus is only on pressing the appeal. But having failed to overcome the delay by offering a just and sufficient cause for this court to condone an inordinate delay of 249 days in filing the appeal, we are not in a position to accept the bald averments made in para 3 of the application as true and correct and condone the delay.

5. The present application is dismissed as meritless. As a consequence thereof, the appeal and the pending applications are also dismissed.

HIMA KOHLI, J

ASHA MENON, J

FEBRUARY 13, 2020

NA